JTH Tax, Inc. v. Whitaker Doc. 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JTH TAX, INC. d/b/a LIBERTY TAX SERVICE,

Plaintiff,

Civil No. 2:07cv170

v.

KENYA WHITAKER,

Defendant.

Declaration of Cory Hughes

Pursuant to 28 U.S.C. § 1746, I, Cory Hughes, submit this declaration in support of JTH Tax, Inc.'s ("Liberty") claim against Kenya Whitaker ("Whitaker"). I declare under penalty of perjury that the following statements are true and correct:

1. I am over the age of eighteen (18) years and am fully competent to testify to the matter stated in this declaration. This declaration is based upon my personal knowledge, Liberty's corporate and business records, and information available form Liberty's employees and agents.

2. I have served as the Assistant Vice President of Area Developer Operations for Liberty since May 2006. From December 2003 until April 2006, I served as an Assistant Regional Director for Liberty in Kansas City, Missouri.

3. In January 2004, Whitaker commenced operation of a Liberty Tax office within the territory TX066 located at 2661 Midway Road, Suite 213, Carrollton, Texas 75006.

4. In January 2007, Liberty noticed some irregularities in the processing of tax returns at Whitaker's Liberty office.

Dockets.Justia.com

5. In particular, all the tax returns processed were paper returns, no tax returns had been electronically filed using Liberty's software, the office had a low average net fee charged for tax preparation services and there was a drop in the number of returns prepared as compared to the prior year. In fact, Whitaker prepared 129 returns in the prior year during the month of January and this year she only prepared 85 returns during this same period.

6. On February 6, 2007, Liberty sent to Whitaker a letter of termination as a result of her failure to use Liberty's software and electronic filing services as required by Section 8 of the Franchise Agreement. Ex. 1.

7. The letter of termination sent to Whitaker reiterates the post termination obligations contained in Whitaker's franchise agreement and states, in part, that Whitaker must immediately:

- Refrain from any further use of any of the licensed marks;
- Not identify herself as a current or former franchisee of ours;
- Transfer all telephone numbers used in relation to the Franchised Business to us;
- Deliver to us all paper and electronic copies of her customer lists, tax returns, files and records;
- Deliver to us the Operations Manual and all updates which we loaned to her; and
- Comply with the post-termination non-competition obligations found in paragraph 10 of the franchise agreement.

8. Whitaker has refused to comply with her post termination obligations and has instead retained her client files, retained the Operations Manual which Liberty loaned to her,

retained her former Liberty telephone number and refused to cease identification under Liberty's federally registered trademarks.

9. It is extremely damaging to Liberty to continue to allow Whitaker to carry on business as a tax preparer in violation of her non-compete agreement in that it undermines our contract with other franchisees and makes it more difficult to retain and grow the customer base that Whitaker previously served as a Liberty Tax franchisee.

10. Liberty currently has approximately 1500 franchisees throughout the United States.

11. Whitaker's operation and refusal to cease operation as a tax preparer and comply with her post termination obligations injures Liberty and our current franchisees who have invested significant time, energy and finances into operating a Liberty Tax franchise.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 5 day of April 2007.

Cory Hughes